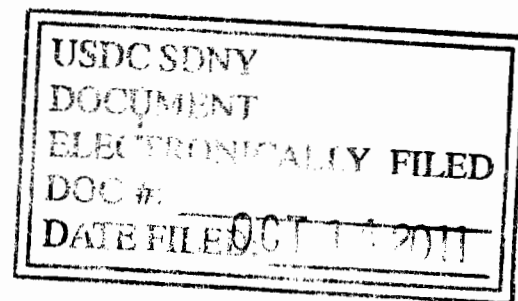


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X
JOHN WILEY & SONS, INC.,

Plaintiff,

-against-

DRK PHOTO, a sole proprietorship,

Defendant.
----- X

ORDER
11 Civ. 5454 (GBD)

GEORGE B. DANIELS, District Judge:

Defendant's motion to dismiss Plaintiff's fraud claims, and any copyright infringement claims prior to June 18, 1997, is GRANTED, since those claims are subject to arbitration.

Defendant's motion to dismiss Plaintiff's copyright infringement claims on or after June 18, 1997 pursuant to Federal Rule of Civil Procedure 12(b)(6) is GRANTED.

Plaintiff may move to amend the complaint as to copyright infringement claims on or after June 18, 1997, if Plaintiff can demonstrate that such a proposed amendment would not be futile.

Defendant's motion to dismiss pursuant to an exception to the first-filed ruled is DENIED without prejudice to renew.

Dated: New York, New York
October 13, 2011

SO ORDERED:

A handwritten signature in cursive script, reading "George B. Daniels".

GEORGE B. DANIELS
United States District Judge